

May 29, 2002



Commissioner Kathleen Q. Abernathy
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: MB Docket No. 02-277
Appearance on *Diane Rhem Show* 5/29/03

Dear Commissioner Abernathy:

As you know, I had the privilege of appearing on the Diane Rehm Show today just after you were interviewed. However, since I do not know if you were able to listen to the remainder of the show, I do not know if you heard what I said regarding the roll of the First Amendment in the media ownership review.

Several times, you stated that the D.C. Circuit said that when you set ownership limits, you are "limiting the First Amendment rights of broadcasters" and that to sustain an ownership limit you must "balance" the value of the regulation against the broadcasters' First Amendment rights.

This so misstates that law that one could almost presume either an intent to mislead listeners or a fundamental failure to understand the cases. The D.C. Circuit has repeatedly *rejected* the First Amendment claims of broadcasters. See *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 167-68 (D.C. Cir. 2002); *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1045-46 (D.C. Cir. 2002).

Rather, it is the public which has a "paramount" First Amendment right to a diversity of views. *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 367, 389-91 (1969).

In any event, I hope this clarification is useful. If nothing else, I hope you will reconsider your decision applying the proper legal standard, which considers the First Amendment rights of the public without any balancing against a non-existent First Amendment right of licensees to own unlimited federal licenses.

Sincerely,

Harold Feld
Associate Director

cc: Stacy Robinson